RECEIVED
CENTRAL FAX CENTER

JAN 2 9 2007

Attorney Docket Number: FSP0149
Title: data normalization
Application Number: 09/995,058
Group Art Unit: 2151
Examiner Name: Tran, Nghi

PRE-APPEAL BRIEF REQUEST FOR REVIEW

for

Attorney Docket Number: FSP0149
Client Reference Number: 260146US
Title: data normalization
Application Number: 09/995,058
Filing Date: Monday, November 26, 2001
First Named Inventor: Schnitzer, Jason K.
Group Art Unit: 2151
Examiner Name: Tran, Nghi

Review is requested of the final rejection in the above-identified application. No amendments are being filed with this request.

This Request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

I am the attorney or agent of record.

Signature /Charles A. Mirho/ Date: 1/29/2007

Charles A. Mirho

Reg. 41,199

Attorney for Applicant

Address all correspondence to:

FSP LLC

Attn: Charles A Mirho

P.O. Box 890

Vancouver, WA 98666-0890

USA

Phone: 360-737-1748

Fax: 360-294-6426

ISSUES/ARGUMENTS FOR WHICH THIS REVIEW IS BEING REQUESTED

In an office action mailed on October 30, 2006, claims 1 and 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dziekan et al. (U.S. Pat. No. 6,704,288) in view of Agarwal et al. (U.S. Patent Application Publication No. 2003/0028642).

Claims 1 and 8

Claims 1 and 8 recite, inter alia, normalizing performance metrics by applying device-specific information for the network elements from which the network performance metrics were obtained. Dziekan, Col. 5, line 36-58 teaches that "device-configuration module 190 is used in manager 100 of the present invention to allow service providers (e.g., 103, 105, . . . , 107) to set specific parameters of the network elements (e.g., 102, 104, . . . , 106) for operation or test purposes. As an example, diagnosis element 160, upon receiving a query from, for example, data service provider 105, can use device-configuration entity 190 to set the network elements (for example, cable modem 102) in a test mode."

In particular, Dziekan describes configuring network devices into different modes, whereas the claims describe applying device-specific information to normalize performance metrics. There is not even any indication in Dziekan that the device configuration module 190 relied upon in the reference collects and uses device-specific information at all, let alone to process performance metrics.

Agarwal, paragraph 0078 teaches that "the monitored information is also fed to the Aggregator 120, which accumulates and normalizes the metrics in some meaningful fashion. This leads to metrics on the global usage of each resource class, as well as the usage by each customer."

Agarwal does not teach normalizing performance metrics according to device-specific information. Argawal merely teaches that the metrics are normalized in "some

meaningful fashion". There is no teaching in either reference relied upon of applying device specific information to normalization. Applying the device configuration of Dziekan to the normalizer of Agarwal would result in a system whereby network devices could be configured, and performance data was normalized in "some meaninful fashion", but not in a system where device-specific information is used to normalize performance data.

Agarwal, paragraph 0078 teaches that "this latter usage is compared with the permissible range set in the customer's service level agreement. Based on these numbers, the Aggregator 120 determines whether any changes are required to the current resource allocation for each customer, and suggests these to the Global Decision Maker 140."

Argawal suggests that the normalization is according to customer usage, not device-specific information.

Claims 3 and 10

Claims 3 and 10 describe that the device-specific information includes at least one of make, model, hardware version, software version, and element settings associated with each of the network elements.

Dziekan, Col. 5, line 36-58 and col. 10, lines 27-57 teaches that "device-configuration entity 190 can also be used by service manager 120 to configure certain pre-defined parameters of the network elements."

There is no teaching anywhere in either reference of applying make, model, hardware version, software version, or element settings to the normalization of network performance parameters.

Claims 4 and 9

Claims 4 and 9 recite obtaining at least one of Management Information Base objects and command line interface information from the network elements and further to determine the device-specific information from the at least one of Management Information Base objects and command line interface information.

Dziekan, Col. 4, lines 5-34 teaches that "service manager 120 can determine if a service provider is authorized to access management information base (MIB) objects of the network elements and receive reports of the network elements' failures."

Dziekan teaches accessing the MIB to receive reports of the device's failure. Dziekan does not teach that the MIB is accessed for device-specific information.

Signature /Charles A. Mirho/ Date: 01/29/2007

Charles A. Mirho

Reg. 41,199

Attorney for Applicant

Address all correspondence to:

FSP LLC

Attn: Charles A Mirho

P.O. Box 890

Vancouver, WA 98666-0890

USA

Phone: 360-737-1748

Fax: 360-294-6426